



[Billing Code: 4120-01-P]

## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Centers for Medicare & Medicaid Services**

**42 CFR Parts 403, 409, 410, 411, 414, 415, 416, 418, 424, 425, 489, and 498**

**[CMS-1715-CN]**

**RIN 0938-AT72**

**Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule; Correction**

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects technical errors in the final rule that appeared in the November 15, 2019 **Federal Register** entitled, “Medicare Program; CY 2020 Revisions to Payment Policies Under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Medicaid Promoting Interoperability Program Requirements for Eligible Professionals; Establishment of an Ambulance Data Collection System; Updates to the Quality Payment

Program; Medicare Enrollment of Opioid Treatment Programs and Enhancements to Provider Enrollment Regulations Concerning Improper Prescribing and Patient Harm; and Amendments to Physician Self-Referral Law Advisory Opinion Regulations Final Rule; and Coding and Payment for Evaluation and Management, Observation and Provision of Self-Administered Esketamine Interim Final Rule” (referred to hereafter as the “CY 2020 PFS final rule”).

**DATES:** This correcting document is effective January 1, 2020.

**FOR FURTHER INFORMATION CONTACT:** Terri Plumb, (410) 786-4481, Gaysha Brooks, (410) 786-9649, or Annette Brewer (410) 786-6580.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

In FR Doc. 2019–24086 of November 15, 2019, the CY 2020 PFS final rule (84 FR 62568), there were technical errors that are identified and corrected in this correcting document. These corrections are effective and applicable beginning January 1, 2020.

### **II. Summary of Errors**

#### A. Summary of Errors in the Preamble

On page 62568 of the CY 2020 PFS final rule, under “Dates”, we inadvertently omitted the applicability date for certain provisions, consistent with and as described in section II.P. of the final rule, Payment for Evaluation and Management Services.

On page 62699, we inadvertently included language that we intended to delete.

On page 62910, we inadvertently included the word “~~levels~~”.

On page 62932, we inadvertently stated incorrectly that the lone amendment to our regulation at § 424.535 was the addition of paragraph (a)(22).

On page 62972, third column, last paragraph, lines 20 through 21, we inadvertently omitted language.

On page 62973, first column, first paragraph, lines 4 through 7, we inadvertently included certain language and inadvertently omitted other language.

#### B. Summary of Errors in Regulations Text

On page 63185, we inadvertently omitted language in the amendatory instruction.

#### C. Summary of Errors in the Addenda

On page 63205, due to a typographical error, language was inadvertently omitted in the table title for Table Group A, the title is incorrect.

On page 63212, due to a typographical error, language was inadvertently omitted in the table title for Table Group AA, the title is incorrect.

On page 63438, the last sentence of Table D.12 contains a typographical error.

On page 63516, the Activity ID entry contains a typographical error.

On pages 63539 through 63563, Appendix 2 was inadvertently included twice.

### **III. Waiver of Proposed Rulemaking and Delay in Effective Date**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (the APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Similarly, section 1871(b)(1) of the Social Security Act (the Act) requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment. In addition, section 553(d) of the APA and section 1871(e)(1)(B)(i) of the Act mandate a

30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the APA notice and comment, and delay in effective date requirements; in cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act as well. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal notice and comment rulemaking procedures for good cause if the agency makes a finding that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and includes a statement of the finding and the reasons for it in the rule. In addition, section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and the agency includes in the rule a statement of the finding and the reasons for it. In our view, this correcting document does not constitute a rulemaking that would be subject to these requirements.

This document merely corrects technical errors in the CY 2020 PFS final rule. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were proposed, subject to notice and comment procedures, and adopted in the CY 2020 PFS final rule. As a result, the corrections made through this correcting document are intended to resolve inadvertent errors so that the rule accurately reflects the policies adopted in the final rule. Even if this were a rulemaking to which the notice and comment and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this

document into the CY 2020 PFS final rule or delaying the effective date of the corrections would be contrary to the public interest because it is in the public interest to ensure that the rule accurately reflects our policies as of the date they take effect. Further, such procedures would be unnecessary because we are not making any substantive revisions to the final rule, but rather, we are simply correcting the **Federal Register** document to reflect the policies that we previously proposed, received public comment on, and subsequently finalized in the final rule. For these reasons, we believe there is good cause to waive the requirements for notice and comment and delay in effective date.

#### **IV. Correction of Errors**

In FR Doc. 2019–24086 (84 FR 62568), published November 15, 2019, make the following corrections:

##### A. Correction of Errors in the Preamble

1. On page 62568, in the second column, the first full paragraph is corrected to read:

“**DATES:** *Effective date:* These regulations are effective on January 1, 2020.

*Applicability date:* The following provisions as described in section II.P. of this final rule, Payment for Evaluation and Management Services, are applicable beginning January 1, 2021: (1) adoption of certain new coding, prefatory language, and interpretive guidance that has been approved by the American Medical Association/Common Procedural Terminology (AMA/CPT) Editorial Panel; (2) establishment of certain AMA Relative Value Scale Update Committee (RUC)-recommended work values for office/outpatient E/M visit codes; and (3) establishment and valuation of a single add-on code for visit complexity inherent to evaluation and management associated with medical

care services that serve as the focal point for all needed health care services and/or with medical care services that are part of ongoing care related to a patient's single, serious, or complex chronic condition.”.

2. On page 62699, second column, under the heading, “7. Rural Health Clinics (RHCs) and Federally-Qualified Health Centers (FQHCs)”, first paragraph, lines 9 through 11, that reads “health services, and we are allowing G0511 to also be billed when the requirements for PCM are met.” is corrected to read “health services.”.

3. On page 62910, third column, second full paragraph, line 6, that reads “(or payment models ~~levels~~ within a track)” should read “(or payment models within a track)”.

4. On page 62932, second column, third full paragraph, lines 15 through 17, that reads “(a)(15); the lone amendment to § 424.535 is the addition of paragraph (a)(22).” is corrected to read “(a)(15); the only amendments to § 424.535 are our previously mentioned revision to paragraph (a)(14) and the addition of paragraph (a)(22).”.

5. On page 62972, third column, last paragraph, lines 20 through 21, that reads “Hospitalists, medical oncologists, and radiation specialties” is corrected to read “Hospitalists and radiation oncologists,”.

6. On page 62973, first column, first partial paragraph, lines 4 through 7, that reads “Other oncology specialties, including hematology oncology, medical oncology, gynecological oncology, and rheumatology” is corrected to read “Rheumatology and other oncology specialties, including hematology oncology, medical oncology, and gynecological oncology,”.

#### B. Correction of Errors in the Regulatory Text

## **§ 403.902 [Corrected]**

1. On page 63185, in the third column, amendatory instruction 2.b. is corrected to read “In the definition of “Covered recipient” by revising paragraph (1).

### **C. Correction of Errors in the Addenda**

1. On page 63205, the title “TABLE Group A: New Quality Measures Finalized for the 2022 MIPS Payment Year and Future Years” is corrected to read: “TABLE Group A: New Quality Measures Finalized and Not Finalized for the 2022 MIPS Payment Year and Future Years”.

2. On page 63212, the title “TABLE Group AA: New Quality Measures Finalized for the 2023 MIPS Payment Year and Future Years” is corrected to read: “TABLE Group AA: New Quality Measure Not Finalized for the 2023 MIPS Payment Year and Future Years”.

3. On page 63438, the last sentence of Table D.12 is corrected by replacing “Q112” with “Q113”.

4. On page 63516, the Activity ID entry “IA\_CC\_18” is corrected to read “IA\_CC\_19”.

5. On pages 63539 through 63563, the second occurrence of Appendix 2 is removed.

CMS-1715-CN

Dated: December 19, 2019.

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**Ann C. Agnew,**  
Executive Secretary to the  
Department,  
Department of Health and Human  
Services.

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